

REMARKS

In the Final Rejection mailed on April 19, 2007 the Examiner rejected claims 1-5 under 35 U.S.C. 102(c) as being anticipated by U.S. Patent Application Publication No. 2004/0093154 to Simmonds et al.

Claim 1 recites using voice recognition to extract the anomaly information from recorded portions of radio broadcasts. Simmonds et al. do not do this. Instead, Simmonds et al. send encoded messages that can be understood by the VCSI 30 in FIG. 2. See generally, paragraphs [0044] and [0058]. Nowhere in Simmonds et al. is voice recognition used to extract data from a radio broadcast message.

Rather than address this point, the Examiner continues to assert that the claim limitation of using voice recognition to extract anomaly information is a statement of intended use and “does not further distinguish the structure of the invention over the prior art.” See Final Rejection mailed on April 19, 2007; page 5. By this assertion, the Examiner is reading this limitation out of the claim. It is improper for the Examiner to ignore this limitation as will be addressed later.

Nowhere in the Final Rejection does the Examiner address the issue of Simmonds et al. using encoded messages to transmit data to the VCSI 30. This is a fact of Simmonds et al. In order to make any reasonable effort at making Simmonds et al. apply to the claims, the Examiner must modify Simmonds et al. to replace the encoded messages and add or modify the voice recognition circuitry so that it receives data from a radio broadcast. This would require the Examiner to reject the claims under 35 U.S.C. 103(a) and not 35 U.S.C. 102(c). Since the Examiner is using 35 U.S.C. 102(c) as the basis for the rejection and not 35 U.S.C. 103(a), the rejection is improper.

The Examiner also refuses to address the point that Simmonds et al.'s voice recognition circuitry is designed to receive voice inputs from the driver and not the radio broadcast. See paragraphs [0036], [0075] and [0088]. The Examiner relies on paragraphs [0036] and [0075] for support in making the rejection. There is simply no mention in either of those paragraphs that the voice recognition circuitry of Simmonds et al. receives voice signals from the radio broadcast.

As noted above, the Examiner continues to ignore limitations in the claims because they are allegedly statements of intended use. This is improper. See generally Pac-Tec, Inc. v. Amerace Corp., 903 F.3d 769, 801 (Fed. Cir. 1990) (“functional language, in cases like the present, cannot be disregarded”) and MIT v. Abacus Software, 462 F.3d 1344, 1356 (Fed. Cir. 2006) (“The claim language here too does not merely describe a circuit, it adds further structure by describing the operation of the circuit”).

To support ignoring these limitations a second time, the Examiner again cites to the Hewlett-Packard case. The Examiner completely ignores the analysis of that case provided by the Application in the previous response. Indeed, the Hewlett-Packard case actually supports the Applicant's position that terms in a claim cannot be ignored. In Hewlett-Packard, the term “gritted” could not be ignored. However, rather than address the content of Hewlett-Packard in any form, the Examiner merely copies the same paragraph from the previous Office Action in the Final Rejection.

Finally, the Examiner suggests that using the phrase “configured to” before the recitation of the functional language in the claims would render them in proper form. Applicant respectfully declines this invitation. Applicant believes that any structural element in a claim that performs a functional limitation MUST INHERENTLY be

structurally configured to perform that function. Thus, if the Examiner were giving the functional limitations their proper meaning, it would be redundant and unnecessary to insert the phrase "configured to," because in order to be able to perform that function, the structure must be so organized or configured. If it weren't, it could not perform the claimed function.

CONCLUSION

No fees are due for this Response. However, the Office is authorized to charge any additional fees or underpayments of fees (including fees for petitions for extensions of time) under 37 C.F.R. 1.16 and 1.17 to account number 502117. Any overpayments should be credited to the same account.

Applicant requests entry of this amendment, reconsideration of the pending claims and the issuance of a Notice of Allowance. Should the Examiner have any questions, he is invited to contact Applicant's representative below.

Respectfully submitted,

Jeffrey D. Ollis et al.

\_\_\_\_/Benjamin D. Driscoll/\_\_\_\_\_  
Benjamin D. Driscoll  
Reg. No. 41,571  
Motorola, Inc.  
101 Tournament Drive  
Horsham, PA 19044  
P (215) 323-1840  
F (215) 323-1300

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